The House Reassembled after lunch at thirty-five minutes past two of the clock, **The Vice-Chairman (Shri Sanatan Bisi)** in the Chair.

THE CONSTITUTION (AMENDMENT) BILL, 1999 (INSERTION OF NEW ARTICLE 30A)

SHRI P. PRABHAKAR REDDY (Andhar Pradesh): Sir, I beg to move for leave to introduce a Bill further to amend the Constitution of India.

The question was put and the motion was adopted.

SHRI P. PRABHAKAR REDDY: Sir, I introduce the Bill.

THE SMALL AND MARGINAL FARMERS (WELFARE) BILL, 1999

SHRI SOLIPETA RAMACHANDRA REDDY (*Andhra Pradesh*): *Sir, I beg to* move for leave to introduce a Bill to provide for the welfare measures to be undertaken by the Central and State Governments for the small and marginal farmers of the country who constitute the majority of farmers in the country and for the establishment of a welfare fund for their benefit and for matters connected therewith and incidental thereto.

The question was put and the motion was adopted.

SHRI SOLIPETA RAMACHANDRA REDDY: Sir, I introduce the Bill.

THE SUPREME COURT OF INDIA (ESTABLISHMENT OF A PERMANENT BENCH AT NAGPUR) BILL, 1999

MISS SAROJ KHAPARDE (Maharashtra): Sir, I beg to move for leave to introduce a Bill to provide for the establishment of a Permanent Bench of the Supreme Court at Nagpur.

The question was put and the motion was adopted.

MISS SAROJ KHAPARDE: Sir, I introduce the Bill.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL, 1999

श्रीमती सरोज दुबे (बिहार): महोदय, मैं प्रस्ताव करती हूं कि दण्ड प्रक्रिया संहिता, 1973 का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति दी जाए।

The question was put and the motion was adopted.

श्रीमती सरोज दुबे: महोदय, मैं विधेयक को पुरःस्थापित करती हूं।

THE INDIAN PENAL CODE (AMENDMENT) BILL, 1999

श्रीमती सरोज दुबे: महोदय, मैं प्रस्ताव करती हूं कि भारतीय दंड संहिता का और संशोधन करने वाले विधेयक को पुरःस्थापित करने की अनुमति दी जाए।

The question was put and the motion was adopted.

श्रीमती सरोज दुबे: महोदय, मैं विधेयक को पुरःस्थापित करती हूं।

THE CONSTITUTION (AMENDMENT) BILL, 1996 (TO AMEND ARTICLES 124, 217 ETC.)— (CONTD.)

SHRI HANSRAJ BHARDWAJ (Madhya Pradesh): Sir, this is the most appropriate moment to speak on a very important question regarding the matter of appointment of judges of the High Courts and the Supreme Court of India. In our country, the Constitution of India provides for a very elaborate and precise provision stating the method of appointment of judges. Article 217(1) says the President shall appoint the judges of the High Courts in consultation with the Chief Justice of India, by warrant under his hand and seal. There is no manner of doubt after the judgment in the Shamsher Singh *Versus* the State of Punjab case that the President appoints judges on the advice tendered by the Council of Ministers, that is, the Cabinet decision.

Over the years, appointments were made by the President on the advice of the Cabinet. This system worked very

well, except that in 1982 when S.P. Gupta case was argued before a seven-judge Bench. The Supreme Court went into this question and decided the case by a majority of 4/3. When Shri Shiv Shanker was the Law Minister, we were practising at that time in the court. This case was thoroughly argued by two eminent counsels, one was the late Seervai and the other was Shri P.R. Mridul. Both of them are not in the Bar today, but they argued this case very ably. In that judgement, the Supreme court failed to lay a proper law. The Supreme Court denied primacy to the head of the Judiciary, and the law laid down by the Supreme Court was that the Chief Justice of India did not enjoy primacy, and any one advice tendered to the President could be accepted; it may be the Chief Justice of the High Court as against the Chief Justice of India. Appropriately, this issue was ripped-open in the Subhash Sharma's case . I am very happy that my senior colleague, Justice Ranganath Misra referred that matter for reconsideration. Two limited points were referred for reconsideration. One was the primacy of the Chief Justice, and the second point, as far as I remember, was the justiciability of the Strength of judges in the High Courts. So, these two limited points were to be redefined by the Court, but in the meantime, there was a change of Government. My good friend, late Dinesh Goswami made a promise in the House that they were going to bring a National Judicial Commission in place of the existing system. So, the Court did not hear it for some time, and, ultimately, later on when Justice Venkatachelliah became the Chief Justice, this case was referred to a nine-Judge Bench. The only limited issue was about these two small points— to give primacy to the Chief Justice of India, and to see whether the strength of judges can be fixed by a judicial review.

SHRI RANGANATH MISRA (Orissa): The three-Judge judgement was referred to the nine-Judge bench.

SHRI HANSRAJ BHARDWAJ: Yes, Sir, but you will agree that the limited issue was, primacy of the Chief Justice and the justiciability of strength of judges. The matter came before a nine-Judge Bench, and the Govenment in all sincerity, for one noble cause that we should have faith in the independence of the Judiciary—I instructed my Attorney General to extend independent assistance to the court, irrespective of the instructions of the Government of India where Shri K. Parasharan was deputed to argue, that let us subscribe sincerely to judicial independence. That was the desire, and I hope that is the desire of every Government because judges are appointed for a noble purpose. Why are judges appointed? The judges are appointed so that they should remain independent, irrespective of who is in power, and whetever pressures are brought on them. These are all matters of consideration after they are appointed. Everbody knows that pre-appointment position of independence is only limited to two aspects that they should be men of integrity and knowledge. These are the two considerations which weigh in the appointment of judges. After that, when they are appointed, they should be strong enough; as Pandit Jawaharlal Nehru said, they should be men who should be independent, and who should not have fear from any quarters. They should be independent under the oath which they take under that Constitution. So, this independence of judiciary is essential when they sit to administer justice. So, these are the two noble principles which are borne in mind at the time of appointment of judges. Any Government or any Minister who performs his function under the Constitution has these two principles firmly in his mind. Who would not like the judiciary to be independent? Everybody is interested because judges and lawyers are meant to serve litigants. If they are not independent, then who will accept their justice? The people will have no faith in those judges who are not independent. Therefore, there are two parameters, two considera-

tions, when we talk of judiciary and judges. This should be the attitude. We had faith, yes, the nine judges will lay down a law and wherever there is any erosion in judicial independence, they might correct it and restore the supremacy of the Chief Justice of India. As a matter of fact, I instructed my officers to prepare a chart and file it before the Court showing that during the last nine or ten years when we were working in the Ministry, the advice of the Chief Justice of India was not ignored. If the Chief Justice of India wanted a person not to be appointed, he was not appointed. If the Chief Justice of India recommended that he should be appointed we saw to it that he was appointed, barring one or two cases where the President of India took a stand and we satisfied the Chief Justice of India that the objection of the President was valid. And it was accepted, So, barring one or two matters, the system was prefect and it was working absolutely normal. But, then suddenly one fine morning, the judiciary said, "Nothing doing; we are taking over this power." They said "Whatever we recommend shall be binding on the President of India. He is bound by that. Consulation means concurrence." This is where we are stuck up and this is where these resolutions and suggestions are coming up. But, I would remind you, Sir, whenever this case was argued in the court, this point which we are discussing here was not vehmently argued by the senior counsels in the Supreme Court. All eminent counsels-I have the record-they have always been insisting, "No, the Chief Justice of India alone should not be empowered. One or two Judge should be added with him." Normally, when the Chief Justice of India makes up his mind to make recommendations, it is expected that he may consult his colleagues. But, there was nothing of this nature in the memorandum of procedure which was adopted between the Chief Justice of India and the President. Therefore, it was his prerogative to consult one, two or all. This was a free situation where he could consult anybody and make his recommendation. But so far as the executive is concerned, the executive saw to it that proper respect to the head of the institution is given. Why it was so, I may take one or two minutes to explain. The Chief Justice of India has two roles—one, when he sits in the Supreme Court along with his brother-judges, he is the first among the equals. He has one say in the judgement making. When he sits with three judges, he is one among the three. But, his position is different when he sits on the administrative side of the Supreme Court. He is the master of the dockets and he is known as the Chief Justice of India. That is why we thought that the Chief Justice of India as an institution must have a better say. That is why the founding fathers, particularly Dr. Ambedkar, had felt that when two persons of high position—one the Chief Justice and the other the President of India, would be there, then there would never be an occasion to have any controversy on this issue. I am very happy that situation has been like that except on one or two occasions when supersession of some judges took place and there was a controversy. Barring one or two cases, this situation was practically, abosolutely different. Now, I have seen, in the last two years, there has been a controversy in the appointment of the next Chief Justice of India. The out-going Chief Justice makes a hell before the new incumbant comes in. This has never been the tradition. Thereafter, now, the principle of seniority has totally been ignored. The Chief Justice of India has been circumscribed by his own colleagues. Where is the primacy of the Chief Justice of India in the present dispensation? So, slowly and slowly, this situation is drifting and drifting to a situation where the Government—the incumbant who occupies the position of the Law Minister—feels that they are merely a 'Post office.' I think, this is not a happy state of affairs. When I was the Law Minister, I did not agree with several recommendations and I justified it by telling the Chief

Justice, 'look here, this is the reason why we are not appointing this particular person.' If he satisfied us, we went by his opinion and if I satisfied him, he was satisfied, and the matter was not pursued. I worked with ten Chief Justices, right from Mr. Justice Chandrachud to Mr. Justice Ahmadi. There was nothing like this. But how to meet the situation? Now, a suggestion has come that we should have a National Judicial Commission from Our senior hon. Member, Mr. V.N. Gadgil, himself, is a barrister. You have to discuss this issue very seriously. I had the privilege of visiting London in 1992 and hearing Lord Taylor, who was the then Chief Justice of England. Whether we like it or not, our system is based, absolutely, on the Westminster System, particularly, the courts. Your entire codified law is based on the English System. Lord Macaulay, Stephen and his other collegues gave that law. The courts that are being administered are working on the same pattern. So, our system is mainly on the Westminster System. We do not have a system with regard to the appointment of judges like in England, where the Lord Chancellor combines three positions in his own one position—he is the Law Minister, he is the Chairman of the House of Lords and he is also the Chief Justice of U.K., who is equivalent to the Chief Justice of India. He combines all the three positions. But, as you know, the British Justice is what it is. They have an unwritten Constitution. Chief Justice Kirby was speaking on the British system of justice. Somebody put him a question. The question was, "What is so good about the British System of justice?" He said, "The three points —learned and independent judges, common people forming the jury and unarmed police—give a good system of justice. I think, this is an ideal situation. If the judges are learned and independent, obviously, the product—justice—would be good. In that process, they do not argue 'why is the Lord Chancellor appointing them; he is the Law Minister, he is part of the Government and he sits in the Cabinet?' No: Therefore, now, the judiciary is taking over this power. I do not still agree with the proposition that the judiciary can issue a Writ of Mandamus to the President of India saying that you will have to appoint and do this and do that. Because, you will agree that the President is advised under Article 74; and that is a Cabinet decision. The advice that is tendered to the President by the Government is under Article 74. We had occasions where the President differred with the Government and the matters were discussed and settled. But, never before, the judiciary could say 'you must appoint this person; otherwise, we will issue a Writ of Mandamus.' This is where I am saying that the appointment, all over the world, is an executive act. In the U.S.A., everybody knows, these are Presidential appointments. Once Roosevelt threatned the judiciary saying 'I will Pack the court.' A stitch in time saves nine. That is the famous proverb arising out of Roosevelt's threat to the judiciary. When they threatened to reject all his actions of social justice, he said to one of his colleagues, "I will pack the court." And he sent a proposal saying 'I will appoint five new judges because I want to induct young blood in the judiciary. Therefore, I am proposing this for legislation. The Chief Justice, at that time, was a very shrewd person. He said to his colleagues, "Let us clear this Social Justice Package of Roosevelt; otherwise, he will pack the court." So, they approved that law, and so goes the famous proverb, "A stitch in time saves nine." So, nine judges were saved. I do not propose that this Government should do that, because it will not be able to do it. But this is a very important issue—an executive action, advice under Article 74 which a Minister tenders to the Prime Minister, and the Prime Minister tenders to the President. Now, the Supreme Court says, "It will be tendered to the President, under compulsion." How can it be? A Minister cannot ask a judge to do this or do that. Similarly, a judge also

cannot ask a Minister to do this or do that. In our executive action, they can certainly strike down our action. But they cannot say, "You make this law, or, you take this Cabinet decision." Cabinet decisions are not a matter of compulsion. They are taken by the Cabinet. When a Law Minister recommends, it is actually the Minister who says, "I recommend such and such to be appointed." When a Minister is compelled that he will have to write, "I recommend such and such for appointment", I do not think it is a happy situation. This will be rather re-writing the Constitution, which is not permitted under the Constitution. Therefore, we get stuck at a point where this issue is required to be urgently taken up and in what shape and in what manner. I do not know whether it will be an ideal situation. I will just remind Gadgilji, because he is a barrister, and this is where I do not agree with his proposal that a National Commission will be an adequate solution to this problem, because, then, outsiders will be rubbing shoulders with the Chief Justice of India and the Law Minister. The Law Minister, under the allocation of business, is the only person who can discuss with the judiciary, on the administrative side. This is under the allocation of business and transaction of business. The Law Minister is the President, as a matter of fact. If the President refers back a case, he reiterates along with the Prime Minister and this is binding on the President also. So, when a cry of this nature was raised in England, it was said, "These Johnnies are functioning in an utter secrecy. We should have an open system." So, what Chief Justice Taylor spoke in the bar, and which was broadcast by B.B.C. I will just quote from the Commonwealth Law Bulletin, Volume 19, No. 1, January, 1993. He said, "It is said this system is too secretive. We ought to have an Appointments Commission and a more open procedure. The present system is 'old boy net' at work, the judiciary perpetuating itself in the same mould so that non-conformists are passed over.... I do not believe an Appointments Commission is desirable. How would it be composed? How could one avoid the selection of its members and their deliberations becoming politicized?" When you appoint High Court Judges, it is also obviously a consultation process. Today, the Chief Justice of the High Court recommends and the Chief Minister is consulted, where there is a Chief Minister; and Governor where there is no Chief Minister. So, this consultation is now done by correspondence. But if we will have a Commission, then they will sit with you in the meeting and discuss. You know, this is sharing of powers. It will not be possible to come to any conclusion. Mr. Minister, you will be asked to explain as to why the justice system in the country is stuck up. I must remind this august House that it is not the prerogative of a non-elected judiciary to tell the nation as to what type of justice system should be there. It is the commitment of the Government and consequently of the Parliament, to decide the justice administration system. Judges are appointed to implement that justice administration system. Therefore, it is the responsibility of the Government to decide as to what type of justice system should be there in the country. It is one of the functions of the Government. Pandit Nehru said, as early as in 1949, "We owe it to our nation to give speedy, inexpensive and substantial justice to this country". Today, the litigation is entirely controlled by judiciary. nothing can happen in the Supreme Court and High Courts unless they agree. No Governemnt has been able to get it liberated. The alternative dispute resolution and arbitration, etc. have all been there, but no cooperation has come. For a short period, we had some cooperation from two-three judges. Therefore, this is essential that your Government functions. You tell your Prime Minister not to yield on this; four or five or any other number. They have

3.00 P.M.

reviewed a judgement. I am very sorry, your Government surrendered to them, by referring this matter through a Presidential reference. Why was it referred to them? Could the Supreme Court review its nine-judge bench's judgement? These are the signals which go to the judiciary and then they decide that there is no opposition to their working. The reference itself was a signal of weakness from the Government. You should have given your reasons for not agreeing with the appointments and sent the file back to the judiciary, saying that these are the reasons why we are not agreeing with this proposal. You see, in my files, after files where I have said so and we have been able to have good appointments. Earlier they said we want to add two more. Okay. This was agreed. Now these two are not sufficient. Then there are four more. The obvious purpose is Chief Justice should not have the primacy. I told Justice Ahmadi, minority view 'whatever you desired that has not been achieved.' You have the Prime Minister as the head of the executive. If the Prime Minister is not respected, then no executive will be respected. You have your Chief Justice of India.

If he is not respected, nobody in the judiciary will be respected. These are your high offices. So all these are institutions which command respect and if the judiciary denies respect to its own Chief Justice, then it is certainly not emerging out of its sincerity to give proper justice to the country. This is the opportunity for the Government. I would only sugest that you have some sort of a debate within the parties and must restore the power of the Government; the President. President means, the Government. Under the Cabinet system, President is advised in all matters by the Government because this is democracy. Governments after Governments will come. Let us not say that all our rights should be given to an institutions to which it does not belong. The Chief Justice of England also condemned the system in the United States and I will read two lines from there. When they suggested about the American system, the Bar and their people there, Lord Taylor replied, "We would surely not wish to have the sort of inquisition deployed in the United States to appoint a jude to the Supreme Court. The candidature of judge Bork and even more horrendously of Judge Clarence Thomas gave us object lessons in how not to proceed". There they grill the judges before their appointment and the judges are almost in tears before they adorn the chair. Our country has very high regard for the judiciary. Irrespective of our differences, differences in Parliament; whenever any issue comes up about judges, we all cooperate. But they are not cooperating. Therefore, we are with the Government on this issue that there should be a restoration of the Constitutional position. If the Constitution is to be re-written, it should be re-written by the House.

If you want to have an amendment of the Constitution, it should come from here, and not through a legislative process of the judiciary. If a National Commission is on your National Agenda, it is very good. But first decide about the composition. I will not be happy to associate practising lawyers with this although some of my friends do want this, and there is a desire of the Bar today that we should have a say in appointment of Judges. But, I am sorry, a man who is appearing in a court, should not have any say in appointment of Judges.

If there is any senior counsel who is not practising in a court, he can certainly be consulted. he is always consulted. I may tell you when Mr. Motilal Setalvad and Mr. Daftary were practising, they were always taken into confidence by Judges and Chief Justices, and there views were very valuable. But that kind of a Bar does not exist today. You cannot take them for granted. They have their own views. I have brought all the

arguments advanced by them before the nine Judges and the eleven Judges. They have never shown sincerity. One day they said, "You add two." Another day they said, "you add four." Beyond this, no assistance has come from the bar. Therefore, you decide about it.

There is a suggestion from Justice Misra former CJI, one Judge from the Supreme Court, one Judge from the High Court, PM, HM, one from the Lok Sabha and one from Rajya Sabha. I am not in favour of the Lok Sabha or Rajya Sabha having a role in appointment of Judges. With great respect, let us do our job here sincerely, which we are not doing these days.

Why I am against this is that our functions are legislative functions. The Minister is our representative, We have faith in the Minister, and we can convey our views to the Minister and to the Prime Minister. But how will you eliminate the Chief Minister? This is a federal structure. If the Chief Minister provides money from the Consolidated Fund of the State to the High Court, can you do away with his consultation? I think, we cannot do this. This is a federal structure, and consultation is required at the State level also. That is where a National Commission is unworkable in this country. You should have a proper debate on this issue. You can strengthen the present consultation process. You can say that aspect only which is objectionable and that it is binding on the executive. Let there be nothing binding on this. Let there be proper functioning, by which we can give respect to judicial recommendations. The Prime Minister and the Law Minister are definitely shaping the justice system in the country. They can also not say that they do not agree. They will have to write their reasons and send it back. So, if you want to have a Judicial Commission, this can be discussed among parties, and, if all agree then we can have any other thing on this. But, I certainly feel that you are quite aware of the problems of the Law Minister. I had these problems. I know how difficult it is to fill vacancies. If you will have this Commission, no decision will be taken.

There will be vacancies, many more vacancies, in courts after courts. There are 3.5 crore cases pending, but the vacancies are not being filled. Today, there is a controversy on transfer of Judges. A new problem is waiting to come up. I may tell you that you are going to face a new problem on transfer of Judges very shortly. There are so many problems. Unless you fill the vacancies, how will you reduce the arrears?

That quick procedure was efficient. We made record appointments. When Justice Venkatachaliah settled the memorandum procedure, everything was straightened up. There was time-bound action on all sides. But, now the desire is to have a say in appointments. This certainly does not arise out of sincerity for judicial independence or administration of justice. Therefore, let there be a public debate on this issue. Invite some senior members. I have my own views on this matter. I have sincerely helped Chief Justices. Justice Misra was one of them. There was never any problem between the Government and the Chief Justice. After all, Prime Minister and Ministers are leaders who are not trained in one day. They are seasoned people.

They are so accommodating in nature, one after the other. They have never gone against the advice of the Chief Justice. It is only the vested interests who say 'the Prime Minsiter did this'. The Prime Minister has no time for these. He is so busy with the problems of the Government. So, the Law Minister and the Chief Justice can discuss on matters of propriety and matters of appointment; and these things can be sorted out, but let there be no delay in these matters. What is frustrating is that you have several Acting Chief Justices. Now-a-days the first puisne Judge is gone, the second

puisne judge is gone; the third one is acting. Why is it so? These are the recommendations which are being made quickly. The result is that we have not been able to do any work of judicial reforms in these last two years. Here I would personally say that we are prepared to extend full cooperation, Mr. Law Minister, in finding out a solution where the power of the Law Minister and that of the Prime Minister is restored. How can you think of a situation where the Prime Minister has simply to go on with the judicial appointments and has only to sign them. I support the spirit and the reason of Mr. Gadgil in bringing forward this Bill. You can decide on the composition of the Commission, but from my side I will suggest. I think, the senior most person that we have in our Party is Justice Mishra, who has the experience. As a matter of fact, I read his judgment where he said: "Now that the Government has agreed for a National Judicial Commission, we will not hear the case." That was in Subhash Sharma's case. At that time, the judiciary had almost agreed for a National Judicial Commission. But, today we have the experience where a judge is ripe for appointment, the lawyer will write a letter to the President Secretariat saying 'don't appoint this man'. What business have they got to write such letters? When, everyday they appear before the court and how can they say, don't appoint this judge or appoint this judge whom we want? Let them sacrifice their practice. Then we will accept their suggestion. I have not appeared before any court for years, after I came here. Can you consider a situation when a Law Minister is sitting with the judges everyday and the next day he goes and appears before them? Similarly we should not permit a situation where the lawyers say that they have a say in the appointments; and the next day they appear before that judge.

Sir, the Government is responsible to Parliament. They have a mandate. Their power should be preserved, because it is we, who will put questions to them, not to a lawyer, who will be appearing before a commission or a court. You are accountable to the country for whatever you do in the field or justice. Consequently, you have the mandate from the Prime Minister. So, I am one of those who will support the power of the Government to be restored by a Constitutional amendment, in whatever way it comes. Otherwise, you will not fulfil your mandate. They have no business in relation to appointment of judges or transfer of judges. Appointment of judges is a very delicate issue. I may remind you that there is a well established law. Recently, a controversy had arisen in Tamil Nadu. I must put the record straight. The Law Minister has no say in these matters. I am not naming the judge, but I am saying so. The Law Minister has no say in determining the age of a judge. It is purely a matter between the Chief Justice of India and the President. As far as I remember, there were several matters in which a question arose as to what the age of a judge was. I do not think any Law Minister has a say in this. It is a function which is discharged by the Chief Justice. Papers are sent in a sealed cover to the Chief Justice of India for his discreet inquiry. And if he finds that the age is correct, he will say 'there is nothing'. And if he says it is incorrect, he will forward the matter to the President. The President will have to go by the advice of the Chief Justice of India, only on these matters of determination of age; like in election matters, the President is bound by the decision of the Election Commission on matters of qualification. Similarly, on the determination of age. There you have absolutely no role. That is where the Law Minister does not come into the picture. Similarly, in transfers, the executive has no role. Many times our friends comments, "The Law Minister is involved." The Law Minister cannot transfer any Judge. It is again the Chief Justice of India who consults his colleagues, Judges and then decides to

transfer. These matters are well-known. Similary, they bring in other issues like seniority. It is always the prerogative of the Chief Justice of India to decide it because he is the head of the judiciary. So, I personally feel, let there be a rethinking. Instead of filing a Presidential reference, you should have filed a review petition. We would have argued in your favour. Now it is a *fait accompli*. I don't think, at this juncture this Government has two-thirds majority, or, the mover of the Bill has any mandate so that we can straightway amend the Constitution. I think, this particular Bill should be sent for eliciting public opinion. In the meantime, the Government and the Opposition can sit and decide what amendments can be brought forth. But it is a must for any Government to ensure that this function of the Government, this power of the Government under the Constitution is not eroded any further. Otherwise, what is happening? I tell you slowly and slowly your Government is giving way to the judiciary. I have cited several cases. I have reminded that it should not be done. If you say, "Let this be given", next time they will say, "This is not enough." So, somewhere this has to be checked. This is the time for a debate on this issue. This Bill has served that purpose. I had discussed this matter with Dr. Singhvi. I told him, "You are a senior member of the Bar. You can make some contribution." I have some sincere doubts about the National Judicial Commission, Suppose, the National Judicial Commission, fails, then, the judiciary will say, "Look, we were much better." So, you make a body which will not fail, which will work, where there will be no outsiders, and where there will be no interlopers. That type of body should be constituted. Thank you very much for having given me an opportunity to speak on this Bill.

SHRI N. THALAVAI SUNDARAM (Tamil Nadu): Mr. Vice-Chairman, Sir, I thank you for giving me an opportunity to speak on the Bill moved by my friend, Mr. Gadgil. I would like to discuss about the appointment of Judges by a Judicial Commission. I would like to bring to the notice of this House that in all countries the power of appointment of Judges is vested with the executive. The question is: why we should have a judicial review with regard to appointment of Judges. My point is after the judgement in *S.P. Gupta* versus *Advocates-on-Record* case, in 1993, there was a finding by the Judges of the Supreme Court. After all these cases, after the pronouncement of the judgement, Judges are taking power in their hands, to appoint Judges in the subordinate courts. As far as the appointment of Judges to a High Court is concerned, they are appointed on the recommendation of the Chief Justice of the High Court and also in consultation with the Chief Justice of the Supreme Court. Now, after the judgement has been delivered, what is the power of the executive? The judiciary is encroaching on the rights of Parliament. As far as the Constitution is concerned, it is very clear on the appointment of Judges. It should be done in consultation with the Ministry. As far as the U.S. and Canada are concerned, they are also having a federal Constitution. The power of appointment of Judges, till today, is vested with the executive. If a person is appointed as a Judge without the approval of the executive, then, somebody would file a writ petition against him. For example, in the case of grant of railway passes to ex-M.Ps., a writ petitition was filed against granting this facility. This is not an ordinary case. This is a very serious matter. We also enjoy some privileges. A Member of Parliament can give some telephone connections from his quota. Even this has been challenged. Somebody has filed a writ petition. Then, there is a stay. Then it is said that this Bill was passed by the President and there was no opportunity for the Government of India. There, a Judicial Commission is necessary My next point is about appointment of Judges. They are raising issues. I am not mentioning any Judge's name. As far as our country is

concerned, we have the poor class, the middle class and the high class of people. According to the law, if anybody does anything wrong, he should get punishment. The situation in our country is this. There was one Judge. There was a malpractice in regard to his birth certificate. There was fabrication of the document. He joined duty as a High Court Judge. (*Interruption*).

SHRI C.P. THIRUNAVUKKARASU (Pondicherry): Sir, is all that necessary! It is ....(*Interruption*).

SHRI N. THALAVAI SUNDARAM: There is no judgement ....(*Interruption*).

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Mr. Sundaram, what are you referring to? (*Interruption*).

SHRI N. THALAVAI SUNDARAM: Why is he interrupting? (*Interruption*).

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Mr. Sundaram, address the Chair, please.

SHRI N. THALAVAI SUNDARAM: Sir, I am referring to the present position of the judicial system. If you are occupying the chair of Judge, you must know the law. If you are yourself going to cheat the people, how are you going to decide a criminal case against anybody? I am just asking. I am not accusing anybody (*Interruptions*). Then, there was a communication from the Minister and the President. He, then, met the Press. There is a duty on the Government or the officers of the President to verify the age. This is the way Judges are behaving. That day, I was in Chennai. The particular Judge met the Press and criticised political parties ....(*Interruptions*).

THE VICE-CHAIRMAN (SHRI SANATAN BISI): No. Please do not refer to all those things. This is not the way because ....(*Interruptions*). Just a minute. It is a very serious matter ....(*Interruptions*).

SHRI R. MARGABANDU: Sir, he is dealing with the policy. He is dealing with the way they behave. (*Interruption*).

THE VICE-CHAIRMAN (SHRI SANATAN BISI): On principles, you can seapk.

SHRI N. THALAVAI SUNDARAM: My point is, he is asking for appointment. Before appointment, the President and the Chief Justice must verify his age.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Why are you referring to all those things? That is the question.

SHRI N. THALAVAI SUNDARAM: This is the position of our country. He is a lawyer. He knows everything. We are not accusing.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): That is not the concern.

SHRI N. THALAVAI SUNDARAM: We are not accusing. I am just trying to explain how the appointment to the Judicial Commission can be. If the power is vested in the executive, what is the reason? Otherwise, tomorrow, Mr. Vice-Chairman, they may send a notice to you, to call for Mr. Sundaram and make his appear before them. The country is going to that position. Every day, there is a lot of litigation, public interest litigation, filed by a number of people. Why? What is the reason? My learned friend, Mr. Thirunavukkarasu, has put certain questions. I am coming to the point. You are constituting a Special Court as far as our State is concerned. We have no objection. For what purpose is it constituted? We have no objection. For what purpose is it constituted? Relating to the period from 1991 to 1996. Who were occupying the posts? *(Interrruptions)*.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Why are you going into all those areas?

SHRI C. P. THIRUNAVUKKARASU: Sir, these matters are not relevant.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Mr. Sundaram, you are talking about appointments. Here, the matter is about the Judicial Commission. They are two different things.

SHRI N. THALAVAI SUNDARAM: They are the powers. I am explaining it, Sir.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Why will that question come here?

SHRI N. THALAVAI SUNDARAM: The appointment of Judges. ...*(Interruptions)*. I am coming to the point. *(Interruptions)*. Sir, if he should interrupt like this, let him discuss the issue. I will sit down. *(Interruptions)*.

THE VICE-CHAIRMAN (SHRI SANATAN BISI): Please take your seat, Mr. Thirunavukkarasu. No, no. If you say anything against the judges, it will not go on record.

SHRI N. THALAVAI SUNDARAM: I am not saying anything against the judges. Now, they have appointed some Special Judges. We have no objection. But the problem is, they have some political vendetta against a particular political party. Why is the Judiciary encroaching upon the jurisdiction of the Executive? *(Interruptions)*. Article 124 of the Constitution amply makes this point clear. I would like to refer to the United States of America. In the United States of America, the Supreme Court Judges as well as the judges of various other courts are nominated by the President. But they have to appear for a hearing before the Senate Committee before they are finally appointed. In our judicial system, they are encroaching upon the jurisdiction of the Executive. Not only that, they are even encroaching upon the jurisdiction of Parliament. When Deve Gowda was nominated as an M.P., a writ petition was filed before the Karnataka High Court. There is a very clear and lucid provision to this effect in the Constitution of India. If a person becomes a Minsiter or Prime Minister, within six months, he has to become a Member of either House of Parliament. How was he made the Prime Minister of India? The Karnataka High Court admitted the writ petition and a notice was sent to the Prime Minister. This is how the judicial system is functioning. The problem is, we have no executive power.

My learned friend, Shri Hansraj Bhardwaj, has referred to the duties of the Law Minister. The Law Minister is present in the House. I would like to know from him as to what the duties of the Law Minister are. Is he to act as a messenger, or is he supposed to send a communication to the judges? What is his role in the Government of India? As far as the question of transfer of a judge is concerned, he is transferred, in consultation with the Chief Justice of India and the Chief Justice of the concerned High Court. As far as the Law Ministry is concerned, any communication from the President of India and the Chief Justice of India will come to the Ministry of Law and Justice. It is the bounden duty of the Law Minister to send that communication to the concerned judge. I am not criticising any judges. The judges in our country are appointed without the concurrence of the Executive. Now, a problem has arisen. We are not threatening any judge, we are not threatening the independence of the Judiciary, we are not threatening any judge with transfer. In a routine way, so far as the question of transfer and appointment of judges is concerned, the file must be sent to the Chief Justice of India, and the Chief Justice of India, in consultation with the Cheif Justice of the High Court, takes a decision to this effect. The file must be circulated to the Minister. I would like to have one clarification from the Law Minister. The entire country knows how the judges should be appointed. They should be appointed, in consultation with the Chief Justice of India and the Chief Justice of the concerned State. Now, once a person

is appointed as a judge, after his appointment, who will decide about his salary, allowances and other things, without the Executive and without the Government of India having the power to decide these things. Who will pay pension etc.? Will the Cheif Justice pay? Or, is the President going to pay pension? I am not criticising anybody. What is the reason for giving the Executive a power of making appointments? As far as the Executive is concerned, as far as the Government is concerned, they have certain powers of giving accomodation, salary, T.A./D.A. and other things.

As far as the Judicial Commission is concerned, a senior member of the Bar Council and also a very senior Member of this House, Mr. Gadgil, has suggested certain changes in clause (2) of Article 124 of the Constitution. I am referring to Clause (2) of the Bill:—

"(a) for the portion beginning with the words "after consultation with such of Judges of the Supreme Court" and ending with the words "Provided further", the following shall be substituted, namely:—

"on the recommendation of the National Judicial Commission and shall hold office until he attains the age of sixty-five years:

Provided that where the recommendation of the National Judicial Commission is not accepted, the reasons thereof shall be recorded in writing:

Provided further that the Chief Justice of India shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose:

(b) the following Explanation shall be inserted at the end, namely:—

Explanation— Nothing in the first proviso to this clause be construed as empowering the President to appoint any person as a Judge of the Supreme Court unless he is recommended by the National Judicial Commission for such appointment"."

As far as the lower courts are concerned, except the District Judges, all Munsifs and Magistrates are appointed only by the State. As far as our State is concerned, the Service Commission is there for the entire Judiciary. From the lower level of Munsifs to the highest level of High Court Judges, the Judicial Commission is necessary. What are the reasons for that? Suppose some lawyer has a very good practice, and he has good knowledge of law on a particular subject, say, taxes. As far as the present position is concerned, his name was recommended by the Chief Justice of the concerned State and two senior Judges. They recommended it to the Supreme Court and then forwarded it to the President through the Law Ministry. Throughout the country, there are some lawyers who have sufficient knowledge and high integrity. Because of some bias, his name will never be recommended because he wants an independent Judiciary. At the same time, if you are aginst the Chief Justice of the State concerned, they will never recommend your name. That is the reason as to why we are for the Judicial Commission.

There are other reasons also. If the President passes an order, they are not able to understand what order is passed by the President. The latest position is that the actual power rests with the Judiciary. The Judicial Commission is required because, after appointment, they can challenge many things. In other countries like Canada, the United States of America, till date, the power of appointment is vested in the Executive. But in our country it is not so. After 1993 only, the power of appointment was vested with the concerned State's Chief Justice. Since the judiciary is encroaching into the day to day working of the Parliament and the Executive, there should be a review regarding the judicial

system and the Judicial Commission. Thank you.

SHRI NARENDRA MOHAN (Uttar Pradesh): The issue raised by Shri Gadgil is very important. I am grateful to him and this nation is also grateful to him because we are not allowed to discuss all these matters outside this Hall. There is so much scare of the judiciary that any action against the judiciary invites defamation, or, any move of the judiciary can not be criticised may land some one in trouble; what to talk of appointments. The appointment of judges is a very crucial point. On this, slowly the Supreme Court has taken the Constitution into its own hands. It is very unfortunate. When the Constituent, Assembly established a very thorough judiciary, perhaps, they only had this in their mind that the judiciary will interpret the Constitution; that at the most the judiciary will interpret the mind of the Constitution Assembly. At that time, the Constituent Assembly did not think that the judiciary will re-write the Constitution. What is slowly happening is that the judiciary has slowly started re-writing the Constitution without any responsibility, and without any authority from the people of this country. The Constitution of India does not give authority to the judiciary to re-write the articles, or, to re-write the clauses of the Constitution. No, it does not. No sane mind will do that. India is the only country where democracy exists and where the judiciary is free to say anything; to do anything without any reponsibility. In America there is side-by-side trial of the judiciary. Same is the case with the Scandinavian countries. And same is the case in Germany. But, here we cannot criticise the judges of the Supreme Court, even if one of them is guilty of corruption. We know that after their retirement, my hon. friend Mr. Ranganath will not mind it — the same Supreme Court judges go to the Bar when they are called upon to make speeches, they criticise their own judiciary and their own judicial system. I know that one of the former Chief Justices of India has said, and it is on record, that corruption has set in the judiciary. it is there on record. In our Constitution or laws there is no remedy for such a case. The only remedy is impeachment. Mr. Misra knows how this impeachment clause has been muted, musused, ill-used and, I would rather say, abrogated. Is it that the Constituent Assembly of India wanted? Why could we not remove a corrupt judge? Not only that. What has happened in the appointment's case? We know a very famous case where one judge of a district court, who was indicted by the Tamil Nadu High Court on corruption charges, was made the judge of the High Court. It was the same High Court which had indicted him on corruption charges. I do not think that we have planned such a judiciary. I do not think that this nation would like such a person, whose integrity is doubtful, to occupy a high pedestal.

SHRI N. THALAVAI SUNDARAM: He was appointed by the State Government.

SHRI NARENDRA MOHAN: I am not going into the politics. Why is this happening? Why could we not check it? There is definitely some problem some where, either in our interpretation of the Constitution or in the mind of the judiciary itself. Why the same judicial mind differs from person to person when they sit in the chair of a judge? During the last 50 years there are dozens and dozens of judgements which are contradictory, not one judgement alone. According to the facts, the situation changes and the law can take its own course because of facts. I can understand it. But the judges enunciating a totally different principle is something which is unthinkable. In the name of judicial activism what are we having? Where are we heading for? Given the kind of judges earlier in our Supreme Court, they were not less intelligent. For them the honour of the judiciary, the love for justice, the

love for the Constitution of India, was the same. Perhaps, they were not so careful about their personal ego. Perhaps, they never wanted to impose their Personal views on the Constitution. Perhaps, those great judges never thought that after retirement they would get some appointment. They never thought of it. Now, it is this at the back of the mind, sometimes, when the judiciary takes a decision. Who does not know it? Here in Delhi a Supreme Court judge gave bail to an industrialist in the mid-night. I know it would not be done for me, Sir. I know it for certain. Why that has happened. I am questioning it, why that has happened. And nobody even dared to write a word against it. This Parliament was mute, was silent; rather, deaf. Sir, the money power is great! I do not say that the judge was purchased. I do not mean that. But I mean this much. What does the Preamble say? Is there equality? Can every citizen of this country get bail from the Supreme Court in mid night? Is it possible? And if it is not possible, who is responsible for this? I bet your indulgence, Sir, and that is why I say Mr. Gadgil did a great service to this nation by bringing in this Constitution Amendment Bill. Now, we can atleast rethink on the whole process. Why should we not re-write those silent paragraphs, those invisible paragraphs, which have been wrongly interpreted by the judiciary itself? Why should we not do that? The Constituent Assembly itself had discussed the point of 'concurrence' and 'consent'. Sir, 'consultation' and 'concurrence' are two different things; and even that has been misinterpreted. 'Consultation' does not mean 'concurrence'. If the Chief Justice of India really wants to take the law into his hands; I am not saying that this is happening; suppose, he wants to take the law into his own hands, then where is the check, Sir? When we talk of dictatorship, we mean there is a person, whose word is law. Nobody can challenge him. Such a person is called 'dictator', Why should this Parliament consider a Chief Justice, who thinks, that he is a 'dictator'. The Constituent Assembly of India never—I use the word 'never'—even dreamt that the Chief Justice of India will ever become a dictator; will ever take the law into his own hands. What remedies are available? Sir, the way the judges of the High Court are being treated, sometimes I get scared. A fourth class employee can go in appeal on his transfer. He has a remedy, atleast; but a judge of a High Court does not have any remedy. He will have to obey. If the Chief Justice of Maharashtra is transferred as the Judge of Meghalaya, he has no remedy; he can only resign. Judges are not gods. Even if they are gods, I am going to defy then in this House. Certainly, they are not gods. They are human beings. They suffer from the same mind which we all possess. They are egoists. They have a passion. There are good and bad minds. Sir, mind is a very complex instrument. When God was making our minds, he left one screw lose. That is why, we differ from each other so much. Judges are also like us. They do not have any special mind. If a judge does not have any special mind, he has all the sufferings and ailments which any human being possesses. Maybe, he is learned book-wise and law-wise, but it does not make him a God. So when the question of appointment comes, we should not leave it to one single individual, i.e. the Chief Justice of India or a coterie of four people. We should not leave it to them. It will create a very bad situation. Sir, you yourself know that in several of our High Courts, there are vacancies. Who is responsible for that? The Chief Justice of India says, "The Government of India is not recommending. The Law Minister is responsible". The Law Minister says, "No, I am not responsible. It is the Chief Justice of India who is not responding in a proper manner". Ultimately, the people of this country are suffering from this tragedy. This tragedy needs to be averted. We have to find a solution to this problem, and the solution lies in the Constitution amendment, solution lies in the Judicial

Commission which all of us are going to recommend. Unless we do that, perhaps, the problem will remain. What should be the composition of that Judicial Commission; this could be discussed further. Should there be four people or five people, should there be the Prime Minister or not, should there be the Law Minister or not, should there be the Leader of the Opposition or not, should there be a respresentative of the High Court or should there be a representative of the Bar, are things which need to be discussed.

The basic thing is, there should be a Judicial Commission which should be entrusted with the power of appointment. I don't doubt the integrity of the Supreme Court. But I doubt the human mind which has a very complex and erratic phenomenon. Human mind is very erratic. If I am angry with my wife, my judgement suffers. That is the human mind. It is very complex. That is why, I say that we should have some checks and counter-checks. Democracy functions properly when there are checks and balances. Democracy does not function in an arbitrary manner. If you give arbitrary powers to someone, those powers will debase the very democracy. Sir, the Apex Court somehow thinks that there should not be any curb on the rights which they have acquired to themselves. But I don't agree with their view. I think it is high time this should be changed. Moreover, in the Judicial Commission, which I am having in my mind, which my friend is recommending, which is there in the Constitution (Amendment) Bill, the process of consultation with the Supreme Court judges exists but not in consultation with the Chief Justice of India alone,—the Chief Justice is very much there, he can express his opinion; he can vehemently differ; he can make his own proposition, but his proposition should not be binding. This was not there in the mind of the Constituent Assembly. Why should his proposition be binding? We are not going to appoint judges of the Supreme Court arbitrarily. These judges of the Supreme Court come from various High Courts. The High Court Judges are the constituency of the Supreme Court judges. And these High Court judges are not at all consulted in the present appointment system! Why should they not be consulted? There is no answer from the Apex Court? Why should the illustrious High Court judges, the illustrious Chief Justices of various High Courts, not be consulted? At least some of them should be consulted in the appointment of a judge of the Supreme Court? This is something which is very important. We are curtailing the rights of our own judiciary by not consulting the Chief Justices of High Courts in the appointment process. It is this which is compelling me to reach a conclusion that the Supreme Court wants to be a super power; it wants total power. Sir, you know that when there is total power, there is corruption. It is a fundamental thing. Total power means total corruption. The Constitution of India does not give total power to anybody, not even to the President of India. Total power vests with the people of India.

Total power will not be given to any single individual under any circumstances. That is why I appeal to this House to ponder over the Constitution (Amendment) Bill, which has just been brought to us by Shri Gadgil. We should again thank him for it, and we should take a very conscious view and recommend it. The nation should know what is happening and what should be done in the present circumstances. Thank you, Sir.

DR. Y. RADHAKRISHNA MURTY (Andhra Pradesh): Sir, I thank Shri Gadgil for bringing this Bill and thus giving us all this opportunity for discussing this very important subject. Very seasoned politicians have spoken here, and legal luminaries also have spoken here, and they have given their valuable opinions. I can only speak from a layman's point of view. First of all, I would like to say that I support the Bill on the appointment of a National Judicial Commission in princi-

ple, as suggested by the hon. Member. There has been an extensive discussion on the subject of appointment of judges and transfer of judges even outside this House for a very long time. When the Constitution was drafted in 1950, under Article 124(2) almost complete powers were given to the Executive in the matter of appointment of judges. For a long time afterwards, some sort of respect and honour was given to the judiciary. No questions were raised. From 1975--all of us know the context--illtreatment of the judiciary has started; interference with the judiciary has started; the slogan of committed judiciary has come; and, the debate has come in. Again, Sir, in 1993 when the judiciary had itself taken over the power of appointment of judges, as many people had earlier pointed out, again, there was scope for discussion and there was a wideranging debate on the subject outside the House. There are some valid reasons for the interest in this debate. Quite a few aberrations had occurred on both the sides, on the side of the Executive as well as on the side of the judiciary. I would like to give a few examples as samples. One when the slogan or the call for a committed judiciary was given and where the judges were promoted and transferred according to the whims and fancies of the Executive and the judges were transferred as attendants to various courts, this subject had come to the fore. When the question was raised whether it was fair and reasonable for the Supreme Court to appropriate its powers for the appointment of judges, the again it has come up for discussion and debate. There was also a dispute whether the Chief Justice should consult two judges or three judges before appointing a judge. The discussion had started again. On the suggestion whether the merit alone should be the criterion for the appointment of a judge or other factors, like social justice, etc. should also be taken into consideration, there was a discussion again on this subject and this suggestion had come from the highest seat. An occasion had arisen again for discussion outside as well as inside the House on whether the Executive should have the powers to transfer cases from one court to the other or whether only the judiciary has the powers to do so. Our learned colleague, Shri Bhardwaj, has said that the Law Minister has no power in determining the age of a judge. I totally agree with him. It is so. It has been the prerogative of the Supreme Court as well as that of the President.

But, Sir, the Law Minister has got a lot of other powers. He has got the powers to send this note to the judge on the Bench, when he is trying a particular case, when he is hearing a particular case, and when he is about to give his judgment. In the midst of a hearing the order can be handed over to the judge and his term can be terminated. All these powers are not small. These are very big powers and these have been utilised, very promptly utilised. Naturally, therefore, the discussion takes place, both inside and outside this House, on the powers of the Executive and the various powers....

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SURFACE TRANSPORT (SHRI M. THAMBI DURAI): I want to just clarify one thing.

DR. Y. RADHAKRISHNA MURTY: Sir, I am not referring to anybody.

SHRI M. THAMBI DURAI: You referred to the Law Minister.

DR. Y. RADHAKRISHNA MURTY: There have been various Law Ministers since 1950. You are not the only one. I did not refer to any one particular Law Minister.

SHRI M. THAMBI DURAI: If you exclude me, it is all right.

DR. Y. RADHAKRISHNA MURTY: Okay.

I am very explicit in my talks about the communication of the note of termination. I think, there is no dispute on that point. To be impartial and objective in this discussion, Sir, we have to consider

the background scenario also. Everybody has got his own or their own complaints against the judiciary for their own reasons. For examples, we have our own complaints against the judiciary, the highest court, the Supreme Court when it hauled up the late great E.M.S. Namboodiripad for just saying that the judiciary also has got a class bias. The Supreme Court hauled him up and punished him. The Supreme Court said or at least thought that it has got a monopoly of the knowledge of Marxism more than what E.M.S. had. They had given the judgement. We have our own complaint. When, for the first time, the late A.K. Gopalan had gone to the Supreme Court on the question of Preventive Detention Act, then the Supreme Court had no respect for the Fundamental Rights, or much of respect for the Fundamental Rights, and they had upheld his detention, the preventive detention. We have our complaints. That is a different matter altogether, but every section of the people have got their own complaints. So, the people see from their own angles. That is what my point is, some other quarters have a grudge against the judiciary because there are now two trends that have come in or recently noticed in the judicial pronouncements. One is the laying down of the concept of public interest litigations. This has given rise to a sense of relief to those constrained by the rigours of the principle of *locus standi*. At the same time, it has caused uneasiness and headache to the administration and to the executive. Sir, next is the so-called judicial activism which is talked about so much, which gave an unconventional interpretation to certain provisions of the law and the act in favour of the mute masses and silent sufferers. It gave relief to some, but it gave headache to some. So, people began to give their own judgment from their own point of view due to their own headaches. The vigour with which the higher seats of justice persued cases of corruption at the highest places, this has again given heart-burning in certain quarters. And then, some are peeved when the Supreme Court had given its judgment or its own interpretation of secularism and held that secularism is the basic feature of the Constitution. They had their own headache. Then intervention of the courts when our administration has shown signs of inaction, inefficiency, decay and degeneration. I refer to the Vohra Report. So, the courts had to interfere in some of these cases, and they had given very unconventional judgements. People have got their own grudge, Sir. Therefore, this unconventional assertion of the judiciary has become a source of relief for some, and a source of heartburning for others. So, there is a renewed interest in this debate on selection process of judges. Sir, I have great respect for the judiciary, but as pointed out by many of my esteemed colleagues, judges are, after all, so human beings. May be, I do not know with "screw loosened". I do not know. But, I do agree with the contention that they are human beings with all the failings and fralities and at times they have displayed their human weaknesses. I do agree. The executive has always and everywhere around the world showed its notorious and voracious appetite for all the powers in the world, to get all these powers in its own hands. It is a well-known thing. In our country also, we have seen this aberration. On the other hand, the legislature, the body elected by the people, is reduced to the status of a mute, silent and helpless spectator once the Government is formed. All things are going on in the courts and bodies like them. Hence the need of a judicious admixture of powers among the executive, the legislature and the judiciary which will ensure probably right checks and balances. Therefore, there is an imperative need for a national judicial commission, as pointed out by the hon. Member who has piloted this Bill. But, I have a few ideas about the composition of this commission. While supporting the idea of a national judicial commission, I have a few suggestions on its composition. This Bill may need an

appropriate wording or a re-grouping of the articles accordingly. The Central national judicial commission should consist of the Chief Justice of the Supreme Court, two seniormost Judges of the Supreme Court, the Prime Minister, the Law Minister, the Leaders of the Opposition of both the Houses of Parliament and the Chairman of the Bar Council of India. This should be a wider body representing the wider sections of the people. A State judicial commission should consist of the Chief Justice of the Supreme Court, one Judge of the Supreme Court, the Chief Justice of the concerned High Court, one Judge of that High Court, the Chief Minister of that State, or the Governor and the Leader of Opposition in the Assembly and the Chairman of the Bar Council of the State. ..*(Interruptions)*..

[The Vice-Chairman (Shri T.N. Chaturvedi) in the Chair].

We can think of that when you come to power ...*(Interruptions)*.. You are so generous to him. ...*(Interruptions)*.. That is why I am saying that. Sir, such a wide body, representing the judiciary, the executive, the legislature and the bar, I hope, should be able to select people with less or least "screws loosened". This body should have transparency regarding the nominations made and the process of selection and why some others were dropped. Therefore, there should be full transparency. That is what I feel. Sir, the powers should include appointment of judges, transfers and probably recommendation for removal for which the final power should be vested with the Parliament. This body should have other powers like transfer of cases from one court to the other. It should also have powers to supervise and oversee the disposal of cases in time and speedily and to suggest remedial measures as to the needs of increasing the number of judges and other such matters. It should have a permanent office, a secretariat, staff with suitable provisions, both monetary and physical.

SHRI B.P. SINGHAL (Uttar Pradesh): Sir, I join all others in expressing my gratitude to the mover of the Bill. We all know that this Bill will go the same way the other Private Members' Bills have been going. But, we also know that this Bill will expedite a more comprehensive Bill from the Government to set right the wrong that has been done. Sir, I would refrain from repeating the points that have already been made by other speakers. But there is something more fundamental to which I would like to draw the attention of the House. The four pillars of State in a democracy, as we know, are: the Legislature, the Executive, the Judiciary and the Press or Media. Among them, the Executive has been notoriously accused of having the biggest chunk of power. But, I have been personally witnessing, since independence, how the Executive had been encroached upon by the politicians, who are legislators by name, and function as appointment committees in districts, divisions and even in the State. That apart, the Executive has also been subjected to a lot of criticism by the Legislature. We often curse the bureaucracy, we often curse the Government servants for the ills that have been there. Likewise, the judges have also been passing strictures on the Executive. The Media is perennially critical of the Executive. What I want to emphasize is, whoever wields the power of the Executive, subjects himself to a lot of criticism and becomes an object of controversy. In this context, as the judges started assuming the role of the Executive in the form of PILs, their roles have become questionable. I know of a State where a judge approached the High Court saying that he had not been allotted a house, and he said that he had been there for six months. The High Court gave an order that all judges will be given a house within the next three weeks. The result is, a judge of a small causes court, with four years of service, gets a house in the State capital but a senior executive, with twenty-five years of service, has to remain in the transit

house. These are kind of orders which rightfully belong to the Executive but were assumed by the Judiciary. So long as they encroach upon the Executive, nobody seems to have minded, but the moment they encorached upon the Legislature and the Parliament, there is a debate in this House. What I want to say is this that in its own interest, it would be highly desirable for the Judiciary to keep its jurisdiction to judicial verdicts and not assume the role of the Executive because, if they do so, they open up themselves to criticism and controversy which is very, very dangerous for any judiciary of any country.

The next point is, we all know, whoever had anything to do with cases in courts knows that judges are known as good judges, tough judges, convenient judges and approachable judges. That is a very strange thing to hear from the members of the Bar, which means, by mere putting on the *gown* a judge does not assume the stature or the calibre that he is supposed to assume. The man in him continues to be what he is.

It will be very dangerous to permit the judiciary to sit in judgement as to who are to be appointed as the judges of the High Courts or the Supreme Court. That power has to vest in the Executive. Now, the basic question is, who is to appoint and, in that context, the idea of a Judicial Commission has been floated. Now, Sir, through you, I would like to mention here that the role of a Judicial Commission should not be permitted to be limited only to the appointment, or the transfer of judges, but it should also have to look into complaints against judges because there is no machinery, whatsoever, even against the judges in the junior courts in the districts who indulge in corruption. No avenues are available to people or even to the Executive to complain about their corruption. I am talking of 1976. A senior Administrative Judge in the Circuit House, who was a dear friend of mine, was on inspection. He said, "Look, in the former days, you could go to district after district. After three or four districts, you could find one judge having a bad reputation. Today we have to go to district after district to find one judge having an impeccable reputation of honesty". It is a matter of 1976, which is very old. But things have further deteriorated since then. So there is a need for prompt redressal of complaints of corruption, complaints of deliberate misjudgement. Every man cannot appeal to the High Court. In fact, you will be surprised to learn that appeals in cases which end in acquittal, are very rare. I was trying to study as to how many appeals have been made in one district, that is, Aligarh. This study, of course, is very old since it was made in 1980. In the last 12 years, there have been no appeals filed against acquittals in police cases. Now, what is going to happen? What happens is that every conviction ends up in an appeal and the judgement given by the judge is scrutinised by the High Court. Every acquittal and that judgement, most likely, is not going to be subjected to scrutiny by any higher court. As a result, for writing a judgement of acquittal far less effort and far less labour is needed. For writing an acquittal-judgement, a judge can write anything and it will not be appealed against. Acquittal will not be reappealed. So, acquiltals have become the order of the day. In every case of conviction, lawyers say, "yes, we must fight and file an appeal". And 80% of the cases go in appeal. So, judges are reluctant to write judgements of convictions because they will be subjected to scrutiny and if they are reversed they are counted in their rolls. Apart from that, the question is of having a Judicial Commission. The Judicial Commission has to be a body which has to draw from the talent that is already available in abundance in this nation. We have a whole galaxy of outstanding Supreme Court judges who have retired. Their wisdom and their knowledge can safely be harnessed, without any fear that they will be acting in a partisan or prejudiced manner. Secondly, we have it

in very senior appointments. The services of the I.B. and the C.B.I. are invariably taken to find out the antecedents of whatever is happening, whoever is going to be appointed in sensitive posts. They are asked to comment on these things. The C.V.C., being a constitutional post, can very safely be made a member of this Commission. He will come to bear with him the reputation of a judge. Above all, the criterion of even determining, who is to be elevated to the post of Chief Justice or to the Supreme Court Judge, I think the minimum we could do to include, besides the merit, wisdom and knowledge is the quality of judgements that any Judge has given during his career as a Judge and how many landmark judgements have been given by him. This could be quoted as a plus point in determining whether he is worthy of being elevated or not.

Lastly, Sir, I would urge that the ultimate authority of appointment will have to rest, as the framers of the Constitution had envisaged, on Government; and, if necessary, till such time a comprehensive legislation is brought and the whole thing is set right for all times, the travesty of justice done to the Consitution by the nine-judges bench must be reversed through an Ordinance.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Shri V.P. Duraisamy is not here at the moment. So, Prof. M. Sankaralingam, you proceed.

PROF. M. SANKARALINGAM (Tamil Nadu): Sir, thank you for giving me an opportunity to speak on how to mend the judicial system which is existing in our country. For a healthy democracy, the functioning of the executive the legislature and the judiciary should be independent, though inter-dependent. One should not try to infringe upon the rights of the other wing. The executive which monitors the entire financial and administrative machinery, including the military and defence forces, though powerful, is accountable to the legislature, which is the creator of the executive and which has every power to change the executive. Regarding the judiciary it is not so. The executive and the legislature have to act under the provisions of the Constitution. So also, the judiciary has to act according to the provisions of the Constitution. But the interpretation of the functioning of the executive is under the purview of the judiciary. Very experienced hon'ble Members have given their valuable suggestions regarding the functioning of the judiciary, but we must know very clearly that there are thousand of cases pending in courts at the district level. Lakhs of cases are pending at the High court level. In the entire country, if you calculate, crores of cases are pending. 'Justice delayed justice denied'. If you fail to give justice, we will not be able to accept the prevalence of justice and law in the country. So, justice should be given at a given time. We must be able to give the maximum time limit for the trial and delivering of a judgement. For that, the network of the judicial system has to be revamped. With all our experience, we have to find a way. We have to take suggestions from experienced persons.

Regarding appointment of Judges, in Tamil Nadu, the Public Service Commission selects the lower level Judges, Munsifs and Magistrates. From there, they get elevated to the High Court and Distt. Courts, apart from direct selections to the High Court. From High Courts they are elevated to the Supreme Court. After they are selected as Judicial Officers at the lower level or at the higher level, they must be able to execute their work very efficiently, to the entire satisfaction of the judicial system. We expect this from the Judicial Officers. But my feeling is that they are not up to the mark. There are cases.

[The **Vice-Chairman (Shri Adhik Shirodkar)** [in the Chair].

I can quoste them, but it is not proper on my part to name any particular court or any Judge. I know definitely that there is inefficiency also. So, what I suggest is that we should have a Judicial Service.

After their selection to the lower courts, they must undergo a judicial course and examination. They should go to a training centre just like in the Administrative Service. When they are selected, according to the rules and conditions, they are given training for three years or two years in the Administrative Staff College and other places. So also, training in judiciary should be given to these selected judicial officers so that they can perform their work or dispose of their work very efficiently, which we expect of them. So, that kind of a system should be developed.

Moreover, for all these monitoring systems a Judicial Commission is a proper monitoring authority. The learned Member, with all his experience, has introduced this Private Member's Bill. The other day, when he moved the Bill, he very clearly mentioned about the composition of the Judicial Commission. The Chief Justice of India should be the Chairman, and he should be responsible to monitor the Judicial Commission. The day-to-day business has to be monitored by the Vice-Chairman. He should be a retired Chief Justice of India. All the High Court Chief Justices should find a place there. Representatives of both the Rajya Sabha and the Lok Sabha should be there, and they must have a legal background also. Any Member should not enter the Judicial Commission. Only a man with a reputed legal background should find a place there.

Moreover, the deliberations of the National Commission should be behind closed doors. They should not be open to the Press. They should not be open to criticism because, in some cases, if a man is affected by a corrupt Judicial Officer, he can appeal to the Judicial Commission. He can prove his point before the National Judicial Commission. It can have its sittings in all the capitals of different States. So, we can tone up the judicial system, as we expect it to be.

Moreover, there must be some power and some convenience also. I know many courts where criminal cases are pending for years together. For a triple murder case in broad day light, the framing of charges takes more than three years. The trial has not taken for years together. Under such a situation what will be the feeling of those who are living in the countryside. Under what umbrella of law they are living they would imagine. We know from newspaper reports that there are cases in the bar when the accused have been killed or shot at by the affected men. This shows they have lost faith in the judiciary. So, to tone up the judiciary, let us have a National Judicial Commission with all the experienced views from the pesent as well as the retirted learned judges. I request the hon. Minister and the Government to bring forward a comprehensive legislation after getting their views. The Bill may be sent to a Select Committee. Let us have the views of the Bar Council and others. We must take their views regarding these proposals. With these words I conclude.

SHRI T. N. CHATURVEDI (Uttar Pradesh): Sir, I thank you for giving me this opportunity to speak on this Bill of momentous importance. Shri V.N. Gadgil is an experienced legal luminary. He was a Barrister. He also has long experience of public life. He had been a Minister and he knows fully the working not only of the Executive, the Legislature, but also of the Judiciary. He is also well-conversent with the relationship between the three wings that was envisaged by our founding fathers and enshrined in the Constitution. He does merit our thanks, our commendation and our appreciation for bringing before this House this Bill for the appointment of a Judicial Commission.

In his scintillating and brilliant speech, he brought out the various issues invovled, the factors that impelled him to bring forth this Bill.

Sir, I rise here to support the move envisaged in this Bill. I will here like to take this opportunity to remind this House that as and when there was a strident or unfair criticism of the judiciary or when there was even a move to restrict the so-called judicial activism, I, for one, did stand up. Many of those who are here will recall that I was one of the very few, who spoke for the maintenance of the rights of the judiciary and the maintenance of their dignity. When I say the maintenance of the rights of the judiciary, it is because the judiciary is an institution. It does consist of individuals, but we pay respect to the judiciary as an institution. They deserve the institutional respect. I am one of those, who will be the last persons to be interested in any kind of confrontation with the judiciary. But, on the other hand, the judiciary should also realise that they also cannot be always super-sensitive; they cannot always seek refuge under the threat of contempt proceedings. They also cannot hide behind the fact. Maybe, today they are riding on the wave of the so-called popularity or popular applause because of having delivered certain judgements, particularly in respect of corruption at high places. That is all welcome; and that was envisaged. Even from the very beginning, in the Constitution, the majesty of the law must be respected. The majesty of the law will always be respected. The law should be supreme. That is why it is a Constitutional law. It is the Constitution which is supreme. I am not one of those who believe that the sovereignty rests with this House or with the Parliament as such because we are elected indirectly and Members of the other House are elected directly. Just because the judiciary is appointed, therefore, they do not have popular mandate is not correct. That is not the question. The real problem is that the Constitution has worked out a scheme of things in which all these three institutions, particularly, supported by a few minor Constitutional authorities, are independent, autonomous in their own sphere. But, at the same time, there is a delicacy of relationship involved. That delicacy of relationship should in no case be disturbed. That is what is important. It will also be not correct to say that during the last 50 years the question of reforms in the judiciary has not received the attention of the people in general and the bar and judiciary in particular. I remember, at one point of time, the Government of India has constituted the Administrative Reforms Commission to look into a large number of reforms. There was this question of reforms in the judicial system also. If we see the memoirs of the first Attorney-General, if I am right, Shri M.C. Seetalvad has mentioned about many of the inadequacies in the working of the judicial system, why and how they could be rectified. That is why, particularly, this judiciary has been given the right to interpret the Constitution. The interpretation of the Constitution, if it goes beyond some extent, then, it means re-writing the Constitution or re-writing particular articles of the Constitution. I think, this did not bode well for the Constitutional relationships. The equilibrium that was envisaged must be maintained. Here I must admit that unfortunately this thing has happened for two reasons. One, was unaccountability, the indifference and inefficiency of the executive. When I say the executive, I mean, the permanent executive, the bureaucracy, the administration of various kinds at various levels. Second, I would like to mention there was an indifferent attitude, lack of adequate responsibility on the part of the Parliament itself; and the State Legislature on their part not playing their rightful role effectively and adequately. I do not want to dilate on these because this House has been discussing these and knows the implications of the statements I am making. There are very serious implications of these two, with the result that there is indifference in the citizenry today. The common citizens feel that they are not getting justice. Taking hope,

sometimes, we go even to quacks, on seeing advertisements about the remedy to a disease. Like that, people go to court sometimes believing that they will get justice. I am not *per se* opposed to the so-called PILs. The question is about the direction, the character, the occasion, and not the way the PIL is being resorted to.

Here, Sir, I would also like to remind the House of another fact. I do not want to criticise anybody. This is just a simple, historical, narrative of the time during the Emergency. The same judiciary was completely crumpled. We know that even fundamental rights like the right to life were in jeopardy, except at the hands of one or two shining examples like Justice Khanna. Even the highest custodian of our rights, the Supreme Court, I should say, succumbed. Many of the High Courts had a better record at that time. Even some Magistrates and Sessions Judges had a better record at that point of time. Sir, I am giving this background, to show how, suddenly, this kind of assertiveness has come about. As one of the friends has mentioned, it is a very unconventional assertion of judicial authority or supremacy. I do not know whether it is conventional or unconventional. But this was sudden. I look at the year 1993 because 1993 is one of the worst years in our history, both for the executive and for Parliament. It was the lowest ebb in the working of the executive and the legislative. *(time-bell rings).*

Mr. Vice-Chairman, I have a few points to make, if I have your indulgence. I am sorry. I will try to finish quickly.

The year 1993 is the year when we find that suddenly the assertiveness began, because there was an executive which, unfortunately, was not providing the direction to the country. The legislature itself, the Parliament itself, was a directionless one and was not able to attend to its functions. Then, suddenly, this arose. When I am making this point, you would pardon me for a personal reference. I myself had been the Secretary to the Department of Justice. I do not want to cite any cases. I do not want to say who approached whom, whether people lobbied for their appointments, transfers, etc., etc. I do not want to go into those cases. My illustrious friend, Mr. Gadgil, himself had said something on this point by quoting some American instances and U.K. instances. Sir, you know how the relations are among brother Judges. There are books and books on this subject. But I will certainly draw attention to one paragraph in his speech where he had mentioned the question of politics, favourites and so on and so forth. He quoted also the remarks of a particular Judge of the Bombay High Court which were not very worthy of a Judge. We may differ with the Emergency. But to make that kind of a remark is not in good taste. Many of these things, at that point of time, had come. He has also mentioned a situation when things are so arranged that there is no one from one particular community and a Chief Justice will come after four years in one court. He has also mentioned that the living together is known as a particular kind of mohalla. It shows that it will be wrong on the part of the Judiciary to harbour an illusion that in perpetuity and perpetually, they will be considered as the Ram Shastris in the history of Indian jurisprudence. All of us have the feet of clay or as the Hindi proverb says: "घर-घर में मिट्टी के चूल्हे हैं।" and here I will just like to point out another fact which we should remember that the Constitution always envisages that any differences should be settled by a mutual discussion. Sir, you are a legal luminary. You must be knowing about the Keshav Singh's case in the State of U.P. The case was: Keshav Singh versus the State of U.P. In this case, the judges were on one side and the legislators were on the other side. But it was the wisdom of persons like Nehru, the hon. Speaker of Lok Sabha, Pandit Pant and others

that this problem could be settled. We are not interested in such a situation. That kind of a situation should ivariably be avoided. Apart from this thing which may be construed as rewriting the Constitution, the other point we have to remember is that it is an institutional respect which the Legislature and the Executive pay. That is why the orders of the court are implemented. They are not self-executing orders. The authority always vests with the Executive. Sir, I would like to make one or two more points. The first point is: Why is the Judicial Commission necessary? The Judicial Commission is necessary because this will provide a protection. Such a Commission will provide protection to the Judiciary itself if there are unfair transfers. Today, when the transfers take place, all kinds of insinuations are made. Even when a judge goes to another place, at least, he can explain his position. Any other harassment can be brought to the notice of the Commission and they can decide about it. Even a matter relating to the conditions of service or perks can be brought before them. Sir, I would also like to mention here the bourgeoning number of cases pending in various courts, not only in the superior Courts but also in the lower courts. That is a scandal about which we all know. Probably, this is high time for the Judiciary to see as to how this kind of a situation is rectified and if they observe a little bit of judicial restraint, then I think they can pay more attention to these problems which are ailing the Judiciary. Not only that, Sir, you will recall that there was a proposal and even a code had been worked out, a code of ethics for judges. We talk about the question of ethics for everybody else. It was worked out by a group of judges. But unfortunately, this was not accepted by the judges, by their peers. When the question of code of ethics comes up, it becomes all the more necessary. Very often, we have a confrontation at different places between the Bar Council and the Judiciary. Now, this is another aspect which also cast a shadow. I do not want to go into the question of corruption. High places are everywhere. But in very mysterious circumstances, the Chief Justice in Bombay had left and the things came out in the Press that somebody's P.A. had complained about the money which was discovered either in this particular desk or that particular desk. There are not one or two cases but a number of cases. I remember, in the earlier days, certain allegations of ordinary favouritism were made against Mr. Justice Sinha and he had to go. That is why, I think, many of these things will come before the Judicial Commission. Sir, in the Constitution, nobody else except the will of the people of India is *swayambhoo*. It is self-created, but, here, unfortunately, by rewriting the Constitution they have become the *swayambhoo*. Their own emoluments, their own conditions of service and everything else to be done, it is really the responsibility of the Parliament, which we have to discharge, and we want to do that keeping in view their dignity. Sir, it is the President who really represents the dignity, the majesty, the authority of the people and the democratic essence of this country, and that is why, it is the Cabinet which aids and advises him. Everybody else has also advised him. I think, in the true sense of the term, the power of appointment should rest with the President of India. Sir, here, I would like to remind you, again, consent and 'consultation'. We have always been reinterpreting in only one isolated case of the appointment of Judges that 'consultation' means 'consent', though the position was discussed, in great length. During the time of the Constituent Assembly, we had doubts, and we referred to them. And this has been very well explained by Mr. Gadgil. So, I would like to submit to you, Sir, that it is high time that we discussed this issue further. There may be differences about the composition of the National Judicial Commission. Sir, I have certain suggestions to make in this regard, but,

for want of time, I refrain from doing so. It is only because of the right in relation to contempt of court I want to make my suggestions. Certain remarks were made not only against Mr. E. M. S. Namboodiripad and some other politicians but also against a former Chief Justice. Even a former Law Minister was also hauled up. I can go on citing a number of such instances. The point is that even the right in relation to contempt of court is limited. It cannot be used as a hammer to stifle all kinds of criticism, by making a statement that you can criticise a judgement but not the judge. I think there is a fair amount of rationalisation; that is why, the question of ethics arises. They should also be like, 'Caesar's wife is above suspicion; and I think the Judicial Commission is the best remedy for this kind of a thing. I am not using, as they have done, the word 'executive despsotism'. In some cases, when the Ordinances were issued, the people have also used the words 'judicial despotism', and so on. I am not interested in using those words. As I said earlier, our Constitution envisages only a very harmonious relationship and a spirit of mutuality, and not any spirit of superiority, thinking that sitting in the Chamber one can made any comment, sometimes deliver sweeping judgements or make sweeping remarks tarring everybody with the same brush. That kind of a situation, I am afraid, is not desirable. We are very well aware as to how the impeachment proceedings fail. I do not want to go into it as to why they fail. That is why the people, while welcoming the PIL or some actions of the Judiciary, also say होना साहब कुछ नहीं है, होगा साहब कुछ नहीं। They know about the condition and the plight of the people in their own courts, but when they read something else in the Press, they say होना कुछ नहीं है। So, all the three wings, have to work in such a way that the confidence of the people is restored. *(Time bell rings)* Sir, I have just a last suggestion to make. There are four alternatives with the Government. One, of course, is, if Mr. Gadgil wants, to withdraw it, but I don't think, with the conviction that he has worked so hard on an important subject, he will just withdraw that unconditionally. The second is, it should be circulated for public opinion. The third one is that the Minister can make a promise that he will convene a meeting of the leaders of all the political parties and then bring another comprehensive Bill. The fourth one is, let a Committee of this House be constituted to have a further thinking over this important matter. I thank you, Sir, for giving me this opportunity.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Unfortunately, we have to stop at 5 o' clock. Mr. Ram Nath Kovind.

SHRI RAM NATH KOVIND (Uttar Pradesh): Sir, may I start?

SHRI T.N. CHATURVEDI: Let him start.

SHRI RAM NATH KOVIND: let me start, then I will continue it afterwards.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Okay, you start it, let it remain, and as we call it in legal language, overnight part-heard.

SHRI RAM NATH KOVIND: Mr. Vice-Chairman, Sir, I am grateful, to Mr. V.N. Gadgil, who has brought this very important Bill. Through this Bill he is giving an opportunity to all of us to discuss the salient features of the judiciary also. No doubt he has brought this Bill for the appointment of a Judicial Commission and for the purpose of selection and appointment of the Judges of the High Courts and the Supreme Court. Thus, Sir, the Bill is lauded by everybody. Now, we have to deal with many aspects of the Judicial Commission because this is based on the theme that the appointment of the judges must be free; and they are quite independent. The emphasis is on the independence of the judiciary. One point which was there in my mind was that when we talk of independence of judiciary...*(Interruption)*

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Since it is past to five, wil you please continue it afterwards?

SHRI RAM NATH KOVIND: Yes, Sir.

THE VICE-CHAIRMAN (SHRI ADHIK SHIRODKAR): Thank you. You will have priority being an overnight part-heard. Now we will go to the next Statutory Resolution. Shri Gopalsinh G. Solanki, your address was quite inconclusive, please conclude it.

THE DEPUTY CHAIRMAN *(in the Chair)*

I. STATUTORY RESOLUTION SEEKING DISAPROVAL OF THE COMPANIES (AMENDMENT) ORDINANCE, 1999

II. THE COMPANIES (AMENDMENT) BILL, 1999-*contd.*

SHRI GOPALSINH G. SOLANKI (Gujarat): I was mentioning about the particular drawbacks and the advantages of this particular amendment. The first thing is that they have amended about 19 sections. Almost all have been duly inserted. But, so far as the question of giving the rights of nomination to the holders of the shares and debentures and fixed deposits is concerned, I would like to draw the attention of the Minister that in cases of nomination, if the holder dies and the nomination has been made otherwise than in respect of the woman and children, again the question comes under the Succession Act. At the same time, I will quote one instance of an Insurance Company, the Life Insurance Corporation, and draw the hon. Minister's attention to Sections 38 and 39, wherein the nomination for the policy was made in the name of mother, father, or brother, or some other relative. In the event of the death of that particular policy holder, the Court never allows, or the Life Insurance Corporation never allows the disbursement of that amount.

But they ask for the Succession Certificate. In such circumstances, the certificate has to be given to the wife and children, whoever is there. So, the nomination, particularly, mere nomination is not going to help. Again the Succession Law will come in the way so far as the question of disbursement of the benefits to the other beneficiaries is concerned.

At the same time, as far as the legal complications under the Hindu Succession Act are concerned. I would like to know whether the Minister has taken into consideration this aspect.

Another aspect relates to allowing the companies to buy back their shares subject to certain safeguards. There is a restriction of 25 per cent of the paid-up capital and the fund so utilised should not exceed 25 per cent of the paid-up capital and free reserves. The term "free reserves" is defined in the Bill. I would like to know from the hon. Minister what would happen in the case of invitation of the issues again and again. The restriction of 24 months for further issue of securities, after the buy-back, will apply only to some issues. There is no restriction on the company in issuing other securities during this period. I would like to know from the hon. Minister whether this buy-back is allowed in the case of equities. There is a restriction of 24 months. But during this 24-months period the company may go in for debentures, the company may go in for preferential shares, the company may go in for preferential shares, the company may go in for deposites. It will create confusion in the minds of the investors. There are chances of the investors being cheated. Of course, it is going to remove the hardships. But so far as the investors are concerned, it is not going to help them. I would like to submit that this is an age where the thirst of everyone, whether it is a company or an individual-we are coming to the end of the century-is to become a multi-millionaire overnight without taking any trouble in life. I referred to Kafka last time. He had written a letter. He said that if such a thirst was going to prevail in the world,